to arrive at the nett amount which the dependent would receive from the award to the estate.

The funeral expenses are of course expressly recoverable under either head of claim by virtue of the provisions of section 4 (ii) (c) and section 5 (ii) of the Civil Law Enactment, 1937.

In my opinion the other expenses are not recoverable.

To the $1,750 I have taken must be added the amount of $20 as funeral expenses, making $1,770.

It remains to consider what effect the award to the estate has upon the claim as a dependent. Examination of the cases from *Rose v. Ford*[4], through *Feay v. Barnwell*[5] and others, and *Ellis v. Raine*[6], to *Yelland v. Powell Duffryn Collieries*[7] reveals clearly that the principle to be applied is that when a dependant receives any benefit — any pecuniary benefit — from the estate of the deceased, to that extent his loss as a dependant is satisfied. But the Court must give a definite judgment.

It is necessary, therefore, for the Court to ascertain the amount of such benefit, if any. That could of course be determined with certainty and accuracy only in the administration of the estate.

However, in those cases where it arises it must be done here and now.

That it may, in particular cases, present great difficulty, is evident.

All prior claims, including those of creditors and/or legatees must be satisfied before the dependant receives anything.

It may well happen that such priorities would absorb much or all of the estate leaving little or nothing for a dependent-beneficiary. How it is to be done is, it seems to me, a problem to be solved, as best it may, in each particular case.

The method — if I read it aright — stated in the judgment of L. J. Goddard in *Ellis v. Raine*[6] would not, it seems to me, solve every case. When there were creditors and other prior claims it might result in the dependant receiving nothing whatever. The concluding paragraph of the judgment of Du Parcq L. J. in *Yelland v. Powell Duffryn Collieries*[7] shows what the difficulties may be. He says :—

> Counsel for the respondents supported his argument by indicating some of the difficulties which must confront the Court if his contention did not prevail. These difficulties, which I think seldom arise in practice, are not a novel product of this recent legislation. There were always some causes of action which did not die with the aggrieved person and since 1846 (the date of the Fatal Accidents Acts) there has existed the danger that a jury might be faced with the difficult duty of assessing the damages proportioned to a dependant's loss with due regard to the probable result of a pending or possible future action from which the dependants might benefit. If the juries of the nineteenth century were equal to the task I know no reason why their modern successors, or Judges performing the same functions should be less successful.

Fortunately this case, as placed before me, presents no great difficulty — there are no creditors and the deceased was intestate. So there are only such prior charges on the estate as funeral expenses, administration expenses, estate duty and the like.

As such the above-mentioned sum of $159.75 is to be deducted from the amount awarded to the estate to find what comes to the dependants as beneficiaries. It leaves $1,610.

As this is greater than the estimated loss to the dependants that loss is completely covered.

The plaintiff will then have judgment for $1,770 and costs.

Judgment for Plaintiff.

KAPOOR SINGH vs. HAJI IBRAHIM BIN HAJI MOHAMED NOOR.

[Original Civil Juris. (Murray-Aynsley, C.J.)
August 25, 1941]

Attachment in execution — Appointment of receiver under section 275A of the Civil Procedure Code (Cap. 7) — Malay Reservations Enactment (Cap. 142), section 13.

The Plaintiff obtained judgment against the defendant and applied under section 275A of the Civil Procedure Code (Cap. 7), for an order that a receiver be appointed in respect of a piece of land owned by the defendant in a Malay Reservation area.

Held, that the appointment of a receiver under section 275A is an attachment in execution within the meaning of section 13 of the Malay Reservations Enactment (Cap. 142), and is therefore prohibited.

J. A. Thivy for plaintiff :—

This is an application for the appointment of a receiver by way of equitable execution under section 275A of the Civil Procedure Code which came into force on 2nd day of September, 1940.

The section provides that the Court may appoint a receiver by way of equitable execution in circumstances in which the High Court of Justice in England would make such an appointment.

Inter alia, the applicant has to shew that the defendant has no property which could be taken by ordinary process of execution, and if he has, to give reasons why legal execution would be useless.

In this case the defendant is the owner of some pieces of land within a Malay Reservation which cannot be attached in execution as provided under section 13 of the Malay Reservations Enactment. The lands cannot vest in the Official Assignee or a trustee as provided under sections 12 and 14 of the Malay Reservations Enactment.

Therefore the defendant's lands cannot be taken by ordinary process of execution.

I cite the following cases: Wills v. Luff[1]. Levasseur v. Mason & Barry[2]. Re Shephard[3]. Halmes v. Millage[4].

As section 275A came into force after the Malay Reservations Enactment it must have been the intention of the legislature to apply this section 275A to lands held under Malay Reservation.

F. A. Reid for defendant :—

Section 13 of the Malay Reservations Enactment provides that "No Malay holding shall be attached in execution of a decree or order in any Court". "'Attach' is a taking or apprehending by command or Writ". (Termes de la ley, quoted in Stroud, Vol. I, 143).

There is nothing to warrant a restricted interpretation of the word in this context. The principle of construction according to the general intention, applied by Kekewich, J., in Blackman v. Fysh(5), is applicable. On appeal this decision was reversed but on another point.

Cases referred to :—

(1) *Wills v. Luff*, 38 Ch. D. 200.

(2) *Levasseur v. Mason and Barry*, (1891) 2. Q.B. 77.

(3) *Re Shephard*, 43 Ch. D. 135.

(4) *Halmes v. Millage*, (1893) 1. Q.B. 555.

(5) *Blackman v. Fysh*, (1892) 3 Ch. 209.

Murray-Aynsley, J. : — The question involved is a simple one, the construction of the Malay Reservations Enactment, but it is one of some practical importance.

The facts are that the plaintiff has a judgment against the defendant which is unsatisfied. The only asset of the defendant is land in a Malay Reservation.

The Malay Reservations Enactment is an example of legislation of a type which is quite common, and its object is to prevent non-Malays from owning land in certain areas. With this end in view certain transactions are prohibited. Among the transactions prohibited are certain proceedings by which creditors may enforce their rights.

Section 12 provides that no Malay holding shall vest in the Official Assignee on the bankruptcy of the proprietor thereof.

Section 13 is the material one; it provides that no Malay holding shall be attached in execution of a decree or order of any Court.

The plaintiff being unable to have recourse to Bankruptcy or to attachment under the Civil Procedure Code now seeks to have a receiver appointed by way of equitable execution.

This gives rise to two questions, first, is the form of equitable execution "attachment" within the meaning of the section? Second, if it is not, is the case one where a Court should exercise its discretion in favour of the plaintiff?

As regards the first point; when the Enactment was passed there was a certain form of procedure by way of attachment provided by the Civil Procedure Code. It was adapted to the cases, in which, in England, a fi-fa.: elegit or other proceedings would be used.

Section 275 reads — "Every decree or order for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be enforced by the attachment and sale of the judgment debtor's property in manner hereinafter provided".

Since the passing of the Enactment, the Civil Procedure Code has been amended and provision has been made for a further form of execution by the appointment of a receiver.

This is section 275A which reads as follows :—

275A (i) "The Court may appoint a receiver by way of equitable execution in circumstances in which the High Court of Justice in England would make such an appointment.

(ii) In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court of a Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which will probably be obtained by the receiver, and to the probable costs of his appointment, and may direct any inquiries on these or other matters before making the appointment.

(iii) The provisions of paragraphs (b), (c) and (d) of sub-section (i) of section 500, and of sections 501 and 502 shall apply to a receiver appointed by way of equitable execution.

(iv) The provisions of sub-sections (ii) to (ix) inclusive of section 294 shall apply *mutatis mutandis* to an order appointing a receiver by way of equitable execution in respect of immovable property or any interest therein".

If the word "attachment" is strictly limited in its meaning to the form of attachment provided by the Civil Procedure Code at the time when the Malay Reservations Enactment was passed, then the appointment of a receiver not attachment within the meaning of that Enactment and the appointment of a receiver is not prohibited.

It seems to me however that that is taking a very narrow view of the matter. According to "Termes de la ley" "attachment is taking or apprehending by command or writ". If one takes this and the meaning given in such dictionaries as I have been able to consult (I have not an Oxford Dictionary here) it appears that the appointment of a receiver is within the ordinarily accepted meaning of legislation of a

permanent character by reference to something so ephemeral as rules of procedure. Even if I had not taken this view, I should not be inclined to use my discretion to produce, by another means, a state of affairs which the legislature clearly intended to prohibit, viz., the diverting of the rents and profits of lands in a Malay Reservation to a non-Malay.

Application dismissed with costs to be set off against the debt.

Application Dismissed.

CHEW LEONG (f) vs. THE CHAIRMAN, SANITARY BOARD, KUALA LANGAT.

[App. Crim. Juris. (Cussen, J.) August 8, 1941]

Sanitary Boards Enactment (Cap. 137) — Demolition order — Section 83 — Closing order, section 80 — Sub-sections (vi) and (vii).

Building belonging to the appellant had been closed by an order made under section 80, sub-sections (vi) and (vii) of the Sanitary Boards Enactment on the ground that they were unfit for human habitation.

The Magistrate on a subsequent date made a demolition order in respect of the same building the evidence being to the effect that the houses were in the same condition as when the closing order was made.

Held, that before the demolition order could be made there must be evidence in the demolition proceedings of the existence of the three conditions set out in section 83 of the Enactment and that the Magistrate was not entitled to act on the evidence led in the previous proceedings.

Appeal from the decision of the Magistrate at Telok Datoh.

The facts appear from the judgment.

M. Edgar for appellant :—

Section 80 (6) provides that a closing order may prohibit a dwelling-house from being used for human habitation. The Act does not prohibit use for other purposes. If the intention of the legislature had been that it could not be used for any other purposes, it would have been easy to say so. The paramount consideration is the question of human habitation, **Halsbury**, Volume 26, page 555, paragraph 1168. The property in question is not being used for human habitation but solely for storing purposes, section 83 of the Sanitary Boards Enactment does not apply.

W. M. McCall, Deputy Public Prosecutor, for respondent.

Cussen, J. : — This is an appeal against a demolition order under section 83 of the Sanitary Boards Enactment (Cap. 137) made by the Magistrate at Kuala Langat in respect of certain buildings on the appellant's land.

A closing order under section 80 (vi) and (vii) had been previously made and obeyed by the appellant.

Section 80 (vi) and (vii) reads :—

"(vi) A closing order may prohibit a dwelling-house from being used for human habitation;

(vii) A closing order shall only be made when it is proved to the satisfaction of the Magistrate that by reason of a nuisance a dwelling-house is unfit for human habitation....."

The buildings remaining on the land (some had been demolished by the appellant after the closing order was made) were no longer being used as dwelling-houses.

Section 83 of the Enactment empowers a Magistrate, where a closing order has been made in respect of any dwelling-house, to make a demolition order if :—

(a) The dwelling-house has not been rendered fit for human habitation;

(b) The necessary steps are not being taken with all due diligence to render it so fit; and

(c) The continuance of any building being or being a part of the dwelling-house is dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses.

All these three conditions must be fulfilled before a demolition order can be made.

In his grounds of judgment the Magistrate states as follows :—

> "From the evidence of the first witness I gathered that these buildings were in the same condition as when the closing order was made, i.e., these buildings were not fit for human dwelling and no step had been taken to render these buildings fit for human dwelling. It was already proved at the time when the closing order was last made that the existence of these buildings was injurious and dangerous to the health of the public. There was no appeal against this order".

The existence of the three conditions set out above (a), (b) and (c) must be proved by admissible evidence given before him before a Magistrate can exercise the power to make a demolition order.

It is not competent for him to base his finding (as he does in this case in respect of condition (c)) on the evidence given and findings made in another proceeding whether before another Magistrate (as in this case) or before himself.

There was no evidence before the Magistrate to support the conclusion that the existence of these buildings was injurious and dangerous to the health of the public.